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9
 10 **UNITED STATES DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA

11
 12 Tiffany Cahill, an individual, on behalf
 13 of herself,
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15 Plaintiff,
 16 v.
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18 Transworld Systems Inc.,
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20 Defendant.
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Case No: '16CV1818 GPC NLS

**COMPLAINT FOR DAMAGES
 AND INJUNCTIVE RELIEF**

- 1. NEGLIGENT VIOLATION
 OF TELEPHONE
 CONSUMER PROTECTION
 ACT (TCPA), 47 U.S.C. § 227
 ET SEQ.**
- 2. KNOWING AND/OR
 WILLFUL VIOLATIONS OF
 THE TELEPHONE
 CONSUMER PROTECTION
 ACT (TCPA), 47 U.S.C. § 227**
- 3. FAIR DEBT COLLECTION
 PRACTICES ACT, U.S.C. §
 1692 ET SEQ.**
- 4. ROSENTHAL FAIR DEBT
 COLLECTION PRACTICES
 ACT, CAL CIV. CODE §§
 1788-1788.32**
- 5. NEGLIGENCE**

JURY TRIAL DEMANDED





Introduction

1. The United States Congress has found abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors, and has determined that abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy. Congress wrote the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereinafter “FDCPA”), to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.
 2. The California legislature has determined that the banking and credit system and grantors of credit to consumers are dependent upon the collection of just and owing debts and that unfair or deception collection practices undermine the public confidence that is essential to the continued function of the banking and credit system and sound extension of credit to consumers. The Legislature has further determined that there is a need to ensure that debt collectors exercise this responsibility with fairness, honesty, and due regard for the debtor’s rights and that debt collectors must be prohibited from engaging in unfair or deceptive acts or practices.
 3. Tiffany Cahill, (“Plaintiff”), through Plaintiff’s attorneys, brings this action to challenge the actions of Transworld Systems, Inc. (“Defendant”), with regard to attempts by Defendant to unlawfully and abusively collect a debt allegedly owed by Plaintiff, and this conduct caused Plaintiff damages.
 4. Tiffany Cahill, (“Plaintiff”), through Plaintiff’s attorneys also brings this Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of Transworld Systems, Inc. (“Defendant”), in negligently or intentionally contacting Plaintiff on

1 Plaintiff's cellular telephone, in violation of the Telephone Consumer
2 Protection Act, 47 U.S.C. § 227 et seq., ("TCPA"), thereby invading
3 Plaintiff's privacy. Plaintiff alleges as follows upon personal knowledge as to
4 herself and her own acts and experiences, and, as to all other matters, upon
5 information and belief, including investigation conducted by their attorneys.

6 5. The TCPA was designed to prevent calls and messages like the ones described
7 within this complaint, and to protect the privacy of citizens like Plaintiff.
8 "Voluminous consumer complaints about abuses of telephone technology –
9 for example, computerized calls dispatched to private homes – prompted
10 Congress to pass the TCPA." *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740,
11 744 (2012).

12 6. In enacting the TCPA, Congress intended to give consumers a choice as to
13 how creditors and telemarketers may call them, and made specific findings
14 that "[t]echnologies that might allow consumers to avoid receiving such calls
15 are not universally available, are costly, are unlikely to be enforced, or place
16 an inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, § 11.
17 Toward this end, Congress found that

18 [b]anning such automated or prerecorded telephone calls to the
19 home, except when the receiving party consents to receiving the
20 call or when such calls are necessary in an emergency situation
21 affecting the health and safety of the consumer, is the only
22 effective means of protecting telephone consumers from this
nuisance and privacy invasion.

23 *Id.* at § 12; see also *Martin v. Leading Edge Recovery Solutions, LLC*, 2012
24 WL 3292838, at* 4 (N.D.Ill. Aug. 10, 2012) (citing Congressional findings on
25 TCPA's purpose).

26 7. Congress also specifically found that "the evidence presented to the Congress
27 indicates that automated or prerecorded calls are a nuisance and an invasion

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1 of privacy, regardless of the type of call...." *Id.* at §§ 12-13. *See also, Mims,*

2 132 S. Ct. at 744.

- 3 8. As Judge Easterbrook of the Seventh Circuit recently explained in a TCPA
 4 case regarding calls similar to this one:

5 The Telephone Consumer Protection Act ... is well known for
 6 its provisions limiting junk-fax transmissions. A less-litigated
 7 part of the Act curtails the use of automated dialers and
 8 prerecorded messages to cell phones, whose subscribers often
 9 are billed by the minute as soon as the call is answered—and
 10 routing a call to voicemail counts as answering the call. An
 11 automated call to a landline phone can be an annoyance; an
 12 automated call to a cell phone adds expense to annoyance.

13 *Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637, 638 (7th Cir. 2012).

14 **Jurisdiction and Venue**

- 15 9. This Court has federal question jurisdiction because this case arises out of
 16 violation of federal law. 47 U.S.C. §227(b); *Mims v. Arrow Fin. Servs., LLC*,
 17 132 S. Ct. 740 (2012).
- 18 10. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15 U.S.C.
 19 §1692(k), and 28 U.S.C. § 1367 for supplemental state claims.
- 20 11. This action arises out of Defendant's violations of the Telephone Consumer
 21 Protection Act, 47 U.S.C. § 227 et seq., ("TCPA"), the Fair Debt Collection
 22 Practices Act, 15 U.S.C. §§ 1692 et seq. ("FDCPA"), and the Rosenthal Fair
 23 Debt Collection Practices Act, California Civil Code §§ 1788-1788.32
 24 ("Rosenthal Act").
- 25 12. Plaintiff is a natural person who resides in the City of San Diego, County of
 26 San Diego, State of California.
- 27 13. Plaintiff resides in San Diego County, as defined by 28 U.S.C. § 1391c(1), the
 28 judicial district in which this lawsuit is brought.

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14. Defendant regularly attempts to collect alleged debts against consumers in San Diego County by sending letters and making phone calls to consumers, as Defendant did to Plaintiff as well.

15. Specifically, Defendant made calls to Plaintiff in an attempt to collect on an alleged debt not owed by Plaintiff, and therefore failed to comply with federal and state laws.

16. This collection effort towards Plaintiff by Defendant in the County of San Diego is the action that gave rise to the claim alleged and therefore venue is proper in the Southern District of California pursuant to 28 U.S.C. § 1391(b) (2).

17. Because a substantial part of the events or omissions giving rise to the claim occurred in San Diego County, venue is proper pursuant to 28 U.S.C. § 1391b(2).

18. At all times relevant, Defendant conducted business within the State of California.

19. Because Defendant's principal place of business is the State of California and is incorporated in the State of California, personal jurisdiction is established.

Parties

20. Plaintiff is a resident in the City of San Diego, State of California.

21. Plaintiff is, and at all times mentioned herein was, a “person” as defined by 47 U.S.C. § 153 (39).

22. Plaintiff is a natural person allegedly obligated to pay a debt, and is a consumer as that term is defined by 15 U.S.C. §1692a(3).

23. Plaintiff is a natural person from whom a debt collector sought to collect a consumer debt which was due and owing or alleged to be due and owing from Plaintiff, and is a debtor as that term is defined by California Civil Code § 1788.2(h).

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24. Plaintiff is informed and believes, and thereon alleges, that Defendant is, and at all times mentioned herein was, a corporation whose State of Incorporation is in California and principal place of business is in Beverly Hills, California.

25. Defendant is a person who uses an instrumentality of interstate commerce or the mails in a business the principal purpose of which is the collection of debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another and is therefore a debt collector as that phrase is defined by 15 U.S.C. § 1692a(6).

26. Defendant, in the ordinary course of business, regularly, on behalf of himself, herself, or others, engages in debt collection as that term is defined by California Civil Code § 1788.2(b), and is therefore a debt collector as defined in California Civil Code § 1788.2(c).

27. Defendant, is and at all times mentioned herein was, a corporation and is a “person,” as defined by 47 U.S.C. § 153 (39). Defendant collects on alleged defaulted debts.

28. This case involves money, property, or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction. As such, this action arises out of a consumer debt and “consumer credit” as those terms are defined by Cal. Civ. Code § 1788.2(f).

29. Plaintiff alleges that at all times relevant herein Defendant conducted business in the State of California and in the County of San Diego, within this judicial district.

Factual Allegations

30. Sometime on or about September 2015, Defendant began calling Plaintiff to collect an alleged debt from Plaintiff. Plaintiff never communicated with Defendant before Defendant began calling her, and she does not know of the underlying alleged obligations for which Defendant is collecting.

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- 1 31. On or before September 2015, Plaintiff began receiving telephone calls from
- 2 Defendant on her cellular telephone ending in 2493 via an “automatic
- 3 telephone dialing system” (“ATDS”), as defined by 47 U.S.C. § 227(a)(1),
- 4 using “an artificial or prerecorded voice” as prohibited by 47 U.S.C. § 227(b)
- 5 (1)(A).
- 6 32. This ATDS has the capacity to store or produce telephone numbers to be
- 7 called, using a random or sequential number generator.
- 8 33. Plaintiff received at least 94 calls since September 2015 or earlier from
- 9 Defendant regarding allegedly owed obligations.
- 10 34. These alleged obligations were money, property, or their equivalent, which is
- 11 due or owing, or alleged to be due or owing, from a natural person to another
- 12 person and are therefore a “debt” as that term is defined by California Civil
- 13 Code § 1788.2(d), and a “consumer debt” as that term is defined by California
- 14 Civil Code §1788.2(f).
- 15 35. Plaintiff is a natural person, as that term is used by 15 U.S.C. § 1692 et seq.
- 16 36. Plaintiff is a natural person as that term is used by California Civil Code §
- 17 1788.2(h).
- 18 37. Plaintiff did not provide express consent to Defendant to receive calls on
- 19 Plaintiff’s cellular telephone, pursuant to 47 U.S.C. § 227 (b)(1)(A).
- 20 38. Further, Plaintiff specifically revoked any consent which may have been
- 21 mistakenly believed, when she informed Defendant to stop calling.
- 22 39. Through this action, Plaintiff suffered an invasion of her legally protected
- 23 interest in privacy, which is specifically addressed and protected by the
- 24 TCPA.
- 25 40. Plaintiff was personally affected because she was frustrated and distressed
- 26 that despite her telling Defendant to stop calling her on her cell phone,
- 27 Defendant continued to harass Plaintiff with calls using an ATDS.

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- 1 41. Defendant's calls forced Plaintiff to live without the utility of Plaintiff's cell
2 phone by forcing her to silence her cell phone and/or block incoming
3 numbers.
- 4 42. Plaintiff is informed and believes and here upon alleges, that these calls were
5 made by Defendant or Defendant's agent, with Defendant's permission,
6 knowledge, control and for Defendant's benefit.
- 7 43. The calls from Defendant came from phone numbers including, but not
8 limited to, 619-870-1797 and 619-870-1854.
- 9 44. The telephone number Defendant called was assigned to a cellular telephone
10 service for which Plaintiff incurs a charge for incoming calls pursuant to 47
11 U.S.C. § 227 (b)(1).
- 12 45. These telephone calls constitute calls that were not for emergency purposes as
13 defined by 47 U.S.C. § 227(b)(1)(A)(i).
- 14 46. Plaintiff did not provide "prior express consent" to Defendant to place
15 telephone calls to Plaintiff's cellular telephone with an artificial or
16 prerecorded voice utilizing an ATDS as proscribed under 47 U.S.C. § 227(b)
17 (1)(A).
- 18 47. These telephone calls by Defendant or its agents violated 47 U.S.C. § 227(b)
19 (1).
- 20 48. By continuing to contact Plaintiff regarding this alleged debt, Defendant
21 engaged in conduct Defendant engaged in conduct the natural consequence of
22 which was to harass, oppress, or abuse a person in connection with the
23 collection of a debt. Consequently, Defendant violated 15 U.S.C. § 1692d and
24 Cal. Civ. Code 1788.17 through incorporation.
- 25 49. Through this conduct, Defendant caused a telephone to ring or engaging any
26 person in telephone conversation repeatedly or continuously with intent to
27 annoy, abuse, or harass any person at the called number. Consequently,



Defendant violated 15 U.S.C. § 1692d(5) and Cal. Civ. Code § 1788.17 through incorporation.

50. Through this conduct, Defendant caused a telephone to ring repeatedly or continuously to annoy the person called. Consequently, Defendant violated Cal. Civ. Code § 1788.11(d).

51. Through this conduct, Defendant placed telephone calls without meaningful disclosure of Defendant's identity. Consequently, Defendant violated 15 U.S.C. § 1692d(6) and Cal. Civ. Code § 1788.17.

52. Additionally, Defendant communicated, by telephone or in person, with Plaintiff with such frequency as to be unreasonable and to constitute harassment to Plaintiff under the circumstances. Consequently, Defendant violated Cal. Civ. Code § 1788.11(e).

First Cause of Action

Negligent Violations Of The

Telephone Consumer Protection Act (TCPA)

47 U.S.C. § 227

53. Plaintiff repeats, re-alleges, and incorporates by reference, all of the above paragraphs of this Complaint as though fully stated herein.

54. The foregoing acts and omissions constitute numerous and multiple violations of the TCPA, including but not limited to each and every one of the above-cited provisions of the TCPA, 47 U.S.C. 227 et. seq.

55. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq., Plaintiff is entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

56. Plaintiff is also entitled to and seeks injunctive relief prohibiting such conduct in the future.

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Second Cause of Action

Knowing and/or Willful Violations Of The Telephone Consumer Protection Act (TCPA)

47 U.S.C. § 227

57. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs of this Complaint as though fully stated herein.
 58. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.
 59. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et seq., Plaintiff is entitled to treble damages, as provided by statute, up to \$1,500.00, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

Third Cause of Action

Fair Debt Collection Practices Act (FDCPA)

15 U.S.C. § 1692 Et. Seq.

60. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs of this Complaint as though fully stated herein.
 61. The foregoing acts and omissions constitute numerous and multiple violations of the FDCPA, including but not limited to each and every one of the above-cited provisions of the FDCPA, 15 U.S.C. §1692 et seq.
 62. As a result of each and every violation of the FDCPA, Plaintiff is entitled to any actual damages pursuant to 15 U.S.C. §1692k(a)(1); statutory damages in the amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and, reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from Defendant.

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Fourth Cause of Action

Rosenthal Fair Debt Collection Practices Act (Rosenthal Act)

Cal. Civ. Code §§ 1788-1788.32

63. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.
 64. The foregoing acts and omissions constitute numerous and multiple violations of the Rosenthal Act, including but not limited to each and every one of the above-cited provisions of the Rosenthal Act, Cal. Civ. Code § 1788-1788.32.
 65. As a result of each and every violation of the Rosenthal Act, Plaintiff is entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages for a knowing or willful violation in the amount up to \$1,000 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney's fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from Defendant.

Fifth Cause of Action

Negligence

66. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.
 67. Defendant owed a duty of care to Plaintiff to provide meaningful disclosure of Defendant's identity, to reasonably protect Plaintiff's privacy rights, and to avoid placing repeated unwanted calls to Plaintiff.
 68. Defendant negligently failed to take affirmative steps to provide meaningful disclosure of Defendant's identity and to avoid making repeated unwanted and unauthorized telephone calls for the purpose of collecting debt from Plaintiff.
 69. Defendant's conduct proximately caused injuries to Plaintiff.
 70. Due to Defendant's conduct as set forth herein, Plaintiff is entitled to actual damages in an amount to be established at trial.

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1 71. Plaintiff believes and alleges that Defendant's conduct of making repeated
2 unwanted and unauthorized telephone calls to Plaintiff and its failure to
3 provide meaningful disclosure constituted oppressive, malicious, despicable,
4 gross and wantonly negligent behavior, which demonstrates Defendant's
5 conscious disregard for the rights of Plaintiff. As such, Plaintiff is entitled to
6 recover punitive damages from Defendant in an amount according to proof at
7 trial.

Prayer For Relief

9 WHEREFORE, Plaintiff prays that judgment be entered against Defendant, and
10 Plaintiff be awarded damages from Defendant, as follows:

First Cause of Action for Negligent Violations of the TCPA, 47 U.S.C. § 227 Et. Seq.

- Statutory damages of \$500.00 for each negligent violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B);
 - Pursuant to 47 U.S.C § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
 - any other relief the Court may deem just and proper.

**Second Cause of Action For Knowing and/or Willful Violations of
the TCPA, 47 U.S.C. § 227 Et. Seq.**

- Statutory damages of \$1,500.00 for each knowing and/or willful violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).
 - Pursuant to 47 U.S.C § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
 - Any other relief the Court may deem just and proper.

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Third Cause of Action

Fair Debt Collection Practices Act (FDCPA)

15 U.S.C. § 1692 Et. Seq.

- An award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
 - An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
 - An award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. § 1692k(a)(3);

Fourth Cause of Action

Rosenthal Fair Debt Collection Practices Act (Rosenthal Act)

Cal. Civ. Code §§ 1788-1788.32

- An award of actual damages pursuant to California Civil Code § 1788.30(a);
 - An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b);
 - An award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ. Code § 1788.30(c).

Five Cause of Action

Negligence

- As a result of Defendant's negligence, Plaintiff is entitled to money damages in an amount to be proven at trial,
 - An award of punitive damages, in an amount to be adduced at trial, from Defendant, and
 - Any and all other relief that the Court deems just and proper.

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1 72. Pursuant to the seventh amendment to the Constitution of the United States
2 of America, Plaintiff is entitled to, and demands, a trial by jury.
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5 Respectfully submitted,
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7 **HYDE & SWIGART**
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10 Date: July 14, 2016
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